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NOMINATION OF JAMES L. MALONE

OCTOBER 3 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

Mr. LUGAR, from the Committee on Foreign Relations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

The Committee on Foreign Relations, to which was referred the nomination of James L. Malone, to be Ambassador to Belize, having considered the same, reports favorably thereon and recommends that the nomination be confirmed.

COMMITTEE ACTION

The nomination of James L. Malone to be Ambassador to Belize was submitted by President Reagan to the Senate on December 13, 1985. On the same day the nomination was referred to the Committee on Foreign Relations. Upon adjournment (December 20, 1985) of the first session of this Congress, the nomination was returned to the President. On January 22, 1986, the President resubmitted the nomination to the Senate and on the same day it was referred to the committee.

On February 19, 1986, the committee held a public hearing. During the committee's business meeting on September 30, the committee voted 9 to 0 to report the Malone nomination favorably to the Senate. Senators voting in the affirmative were: Lugar, Helms, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Trible and Evans.

COMMITTEE COMMENTS

Mr. Malone is an attorney with broad experience in academe, private practice and government. He has taught at UCLA and the University of Texas, and served as Dean of the Williamette University College of Law. He was in private practice with the Washing-

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ton, D.C. firm of Doub and Muntzing. Throughout his career he has also held positions of increasing responsibility in government. His experience spans from the Federal Maritime Commission to the Arms Control and Disarmament Agency to the Department of State. From 1981 to 1985, he served as Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs (OES).

Under Mr. Malone's direction, OES had many impressive accomplishments. A system to integrate science and technological information into U.S. foreign policy was developed. The United States developed and implemented a comprehensive oceans policy. Urgent environmental problems such as the protection of the ozone layer were addressed. America's newly developed scientific foreign policies were translated into action with agreements for cooperation such as that with Brazil. Addressing a concern for the future, OES took the lead in establishing an International Nuclear Safety Training Academy. To consolidate these achievements, Mr. Malone led the way in establishing full-time science offices in the Career Foreign Service.

Throughout his career in government, Mr. Malone also gained valuable diplomatic experience. While at ACDA, he served as the U.S. Representative to the Geneva Conference of the Committee on Disarmament. As Assistant Secretary of OES, he led the U.S. Delegation to the U.N. Law of the Sea Conference.

In view of Mr. Malone's extensive qualifications, the committee recommends that the Senate advise and consent to his confirmation as Ambassador to Belize.

ADDITIONAL VIEWS OF MINORITY MEMBERS ON THE NOMINATION OF JAMES L. MALONE

We strongly oppose the nomination of James L. Malone to the position of Ambassador to Belize. We believe that he is unsuited to serve as a U.S. Ambassador in light of his poor performance as Assistant Secretary of State for the Bureau of Oceans and International Environmental and Scientific Affairs (OES) and his lack of candor in his appearances before the Committee on Foreign Relations.

Many of the problems and questions which arose during Mr. Malone's previous appearances before the Foreign Relations Committee in connection with his nominations to other positions within the State Department re-emerged during his confirmation hearing of February 19th. Mr. Malone's responses to extensive questioning by members of the committee during hearings and to written questions for the record did not allay our concerns. (See appendix for written questions and responses.)

Our concerns were shared by a majority of the members of the committee on April 10th, when this nomination was considered by the committee at its business meeting. At that time the committee refused to report the nomination either favorably or unfavorably by votes of 7–9, with one voting present (Senators Lugar, Helms, Kassebaum, Boschwitz, Pressler, Murkowski, and Trible voting aye; Senators Mathias, Pell, Biden, Sarbanes, Zorinsky, Cranston, Dodd, Eagleton and Kerry voting nay; and Senator Evans voting present) and 8–9, respectively (voting same as above except for Senator Evans who voted aye on this motion). In our view this closed the matter.

In addition to our objections to this nomination on substantive grounds which we have outlined below, we also must lodge a strong objection to the manner in which this nomination was handled by the Majority members of the committee. We believe that the Majority members of the committee acted without regard for the rules of the committee and in a manner inconsistent with the Standing Rules of the Senate—and this has established a most unfortunate precedent. We seriously question why such action was taken on Mr. Malone's nomination when the evidence clearly suggests that U.S. foreign policy interests will not be served by his confirmation.

The committee considered the nomination on April 10th. In our view, since no member sought to reconsider either vote on that day, or on the 2 days immediately following such vote as specified by Senate Rule XIII, this matter had been definitively disposed of

by the committee. When we were notified that the chairman of the committee intended to place the Malone nomination before the committee in September, we informed the chairman of the committee by letter on September 15th of the concerns this raised in our minds. We informed him that we would be unable to participate in any reconsideration of this nomination. That letter appears below:

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
WASHINGTON, DC, SEPTEMBER 15, 1986.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations,
Washington, DC.

DEAR MR. CHAIRMAN: We were quite surprised to receive a notice of your intention to ask the Committee to reconsider the nomination of James L. Malone to the position of U.S. Ambassador to Belize. It is our view that the action of the Committee on April 10 rejecting motions to report that nomination favorably or unfavorably by votes of 7–9 and 8–9, respectively, has fully disposed of this nomination.

Mr. Malone has been nominated to three different positions within the Committee's jurisdiction since 1981. The President was forced to withdraw his name from consideration as Ambassador at Large for the Law of the Sea Negotiations when it became clear that the Committee would not support his nomination. This year, Mr. Malone personally sought and received a vote on his nomination to the position of Ambassador to Belize, despite the fact that he was told that there were insufficient votes to support his nomination. We believe, as a matter of principle, that when the Committee has acted with respect to an individual on several occasions as definitively as in the case of Mr. Malone, the matter should be considered resolved. To break with precedent and reopen a vote months later raises serious questions about the validity of this Committee's decisionmaking process and the credibility of our ambassadorial representation abroad. We cannot imagine that Mr. Malone could be a welcome or effective ambassador for the United States to Belize given the history of the Committee's deliberations.

For these reasons we cannot participate in a business meeting at which the nomination of James Malone is to be reconsidered. We recognize that this is an important decision, and it is one which we have made with great reluctance. We sincerely hope that we can reach agreement with you that this nomination will not be raised again in order to maintain our customary bipartisan cooperation in the expeditious disposition of pending Committee business.

Sincerely,

EDWARD ZORINSKY.
CLAIBORNE PELL.
PAUL S. SARBANES.
CHRISTOPHER J. DODD.
JOHN F. KERRY.
JOSEPH R. BIDEN, Jr.
ALAN CRANSTON.
TOM F. EAGLETON.

Despite Senate Rule XIII, the Majority members of the committee voted to report the nomination of James Malone more than 5 months after the committee had voted against him thereby acting contrary to Senate Rule XXVI, which enjoins committees to conduct their business in a manner "not inconsistent with the rules of the Senate."

In addition to acting in a manner inconsistent with the Standing Rules on the Senate, the Majority members of the committee also ignored rule 4(b) of the Rules of the Committee on Foreign Relations. Rule 4(b) specifically requires the presence of a Member from each party for the "transaction of business other than reporting", such as the reconsideration of a vote taken earlier by the committee—and it is our view that in this case reconsideration was a necessary step prior to a vote to report.

We do not accept the argument that the Majority of the committee can do whatever it wishes, whenever it wishes, regardless of rules duly adopted by the committee and the Senate. The rules have been established and agreed to in order to protect the interests of *every* member. The spirit and letter of these rules in our view should be observed. Unfortunately that view is apparently not shared by the Majority members of the committee, at least in this particular case.

We think it important to provide some background concerning the history of James Malone's earlier appearances before the committee and his performance as Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, in order that it will be clear that our actions on this matter were in no way based upon partisan concerns, but were governed by our firm belief that U.S. interests would be ill served should Mr. Malone be confirmed as a U.S. Ambassador.

Mr. Malone's Earlier Committee Appearances Were Controversial

James Malone's nomination to the position of Ambassador to Belize is his third nomination to positions within the jurisdiction of the Committee on Foreign Relations. Before being nominated to this most recent position he was nominated to two other positions within the State Department; first as Assistant Secretary of State for the Bureau of Oceans, International Environmental and Scientific Affairs (OES) in the Spring of 1981, and again in May of 1982 to the position of Ambassador-at-Large in connection with his designation as the President's Special Representative to the Law of the Sea Conference. Both nominations proved controversial, and in the case of the latter, the President withdrew the nomination on July 27, 1982, after it became clear that there were insufficient votes in committee to report the nomination of Mr. Malone favorably.

Mr. Malone remained as Assistant Secretary of OES after his second nomination was withdrawn, until he was replaced by John Negroponte in July 1985. In an effort to facilitate Mr. Negroponte's confirmation, the Administration reportedly assured Senator Helms that Mr. Malone would be given another position within the Department of State. However, it was not until December 13 that his nomination to the position of Ambassador to Belize was trans-

mitted to the Senate. Currently he is a consultant to the State Department awaiting the outcome of his nomination.

Areas of Controversy

The following six issues arose during the committee's consideration of Mr. Malone's earlier nominations:

—insensitivity with respect to a potential conflict of interest, and/or appearance of impropriety which might arise in carrying out his duties at OES (particularly nuclear non-proliferation duties) in light of his representation of certain foreign nuclear utilities while in private law practice;

—violation of certain written commitments made to the Foreign Relations Committee as a condition of his first confirmation;

—mismanagement of the OES Bureau as reported by the Inspector General's Office (IG) of the State Department;

—inadequate diplomatic preparation in connection with handling of Law of the Sea (LOS) negotiations which led to unsuccessful efforts to negotiate an acceptable LOS treaty;

—questionable judgment and propriety in conjunction with several consulting contracts and contract procedures, which in one case cost the U.S. Government almost $200,000 to pay for the services of a private consultant who served as Mr. Malone's personal assistant for LOS matters; and

—false statements under questioning by the committee in connection with his nomination to the position of Ambassador at Large as the President's Representative to the Law of the Sea Conference.

OES Nomination

Mr. Malone first encountered difficulties in connection with his nomination as Assistant Secretary of OES. At that time, concerns were raised about Mr. Malone's ability to carry out his nuclear non-proliferation duties (which would include ruling on specific export licenses and other matters related to foreign nuclear utilities) in an impartial manner, in light of his representation of certain foreign nuclear utilities (Taiwan Power Company, Kansai Electric Company, and Tokyo Electric Power Company) while in private law practice, and the ongoing representation of these clients by his former law firm, Doub and Muntzing.

Mr. Malone's difficulties were compounded by his insensitivity to these concerns, and his unwillingness to agree definitively to recuse himself from any involvement in matters which might arise at the Department of State in connection with them. The following additional views of four members of the committee which were expressed at the time of this nomination outline those difficulties. These views are also contained in the printed report on the nomination of James L. Malone (Exec. Rept. 97–9).

ADDITIONAL VIEWS OF SENATORS GLENN, SARBANES, ZORINSKY, AND CRANSTON

We regret that we cannot join in recommending the confirmation of James L. Malone as Assistant Secretary of State for Oceans and International Environment and Scientific Affairs.

In this position, Mr. Malone would be the senior Administration official with day-to-day responsibility for implementing United States nonproliferation policy, a subject of deep concern to the Committee and of profound importance to the national security.

As an attorney, Mr. Malone represented a number of foreign nuclear utilities and was a registered foreign agent for one of them. He was associated with the firm of Doub And Muntzing, which represents a variety of foreign nuclear interests. Because Mr. Malone would be in a position to rule on U.S. nonproliferation policy in general, and on specific export licenses and other approvals affecting former clients, it is essential that he be committed to adhere scrupulously to requirements that attorneys in public service avoid any conflicts of interest, as well as appearances of impropriety. In our view, Mr. Malone had failed, despite Committee efforts, to demonstrate this commitment.

Mr. Malone has acknowledged personally representing three foreign nuclear utility clients: Taiwan Power Company, a wholly owned subsidiary of the Taiwan Government; Tokyo Electric Power Company (TEPCO), a major Japanese electric utility; and Kansai Electric Power Company (Kansai), a second Japanese electric utility. From January 10, 1979, until December 2, 1980, Mr. Malone also served as a registered foreign agent for Taiwan Power Company. Each of these entities has in the past been the focus of major U.S. nonproliferation policy initiatives.

In November and December 1980, while still employed at Doub and Muntzing and representing the three clients mentioned above, Mr. Malone co-chaired the Reagan Transition Team on Nuclear Non-Proliferation Policy. The report of the transition team, dated December 18, 1980, contained the following specific policy recommendations:

> There should be no concern about those industrialized nations with substantial and expanding commitments to nuclear power, e.g., Japan and the Federal Republic of Germany.
>
> Requests for retransfer for reprocessing in the United Kingdom and France will be approved without linkage to other issues (i.e., without reference to criteria used by the Carter Administration which required a foreign utility to show, for example, that it was suffering from spent fuel congestion or that its reprocessing contract had been signed before the announcement of the new U.S. policy aimed at discouraging this activity.)

TEPCO and Kansai would be major beneficiaries of these proposed changes in U.S. policy.

Clearly, to avoid the appearance of professional impropriety, Mr. Malone should not have dealt with issues of concern to his clients on behalf of the incoming Administration. His demonstrated insensitivity to this problem leads some Members to conclude that it would be particularly important that this nominee be clear and precise as to how he would avoid future conflicts of interest and appearance of impropriety.

Unfortunately, in his appearances before the communications with this Committee, Mr. Malone has been less than forthcoming and has increased, rather than lessened, concerns. In his March 13 response to the standard Committee questionnaire, Mr. Malone stated:

> In keeping with the ethical standards applicable to Government officials and to the legal profession, I will disqualify myself from participating as a Government official in any aspect of a particular matter in which I have been personally involved in private practice on behalf of a client, as well as any substantially related matter involving or affecting such clients, or in which my prior firm, colleagues, or clients could appear to receive preferential treatment. I will also disqualify myself from all particular matters in which a major prior client has a direct financial interest. I anticipate that there will be very few, if any, instances which I will need to disqualify myself.

However, at his March 16 hearing, Mr. Malone was less precise in his assurances. He acknowledged his representation of three foreign clients. Mr. Malone was then asked by Senator Glenn whether he intended to disqualify himself from making recommendations to approve reprocessing by Japan and Taiwan. Although he agreed to disqualify himself "to the extent that there was any conflict in any way," Mr. Malone suggested that since he had not actively lobbied on behalf of these foreign clients, he would not have to disqualify himself from making decisions which directly affected them.

Seeking a definitive clarification, Senator Glenn pursued this matter in a question for the record. Mr. Malone replied on March 23 as follows:

> I have terminated all relationship with my former law firm and retain no interest of any kind with the firm or the companies mentioned in the answer to question 1. My functions with the firm in relation to these companies was only in a reporting capacity; however, as I have terminated my relationship with the firm there could not be any conflict or interest with respect to my participation in my future State Department activities.

The clear impression created by this answer was that because Mr. Malone had terminated his relationship with his firm, he had no intention of recusing himself from any matter affecting any of his former clients. But in the March 13 statement, Mr. Malone had appeared to state that he was indeed prepared to disqualify himself from a variety of matters affecting his former clients.

Faced with three apparently different answers on the issue of disqualification, Senator Glenn requested, in a March 31 letter to Mr. Malone, an unambiguous statement from him and an explanation of the inconsistencies. In his April 1st reply, Mr. Malone reiterated that he had terminated all relationship with his former law firm and went on to state:

> I would expect to seek official guidance in any case which might be seen as falling within the general disqualification policy provided. For example, I may determine that it is appropriate to disqualify myself from ruling on export licenses and reprocessing requests, as well as requests for permission to transfer U.S. origin spent fuel from Japan to the U.K. or France, for the above three companies for a period of time, as you suggest.

Mr. Malone's continued unwillingness to be precise and categorical raises still further questions as to his intentions.

Significantly, Mr. Malone's April 1 statement was at odds with the State Department's guidance to attorneys in Mr. Malone's situation. The State Department guidance states that:

> You should clearly disqualify yourself, for example, from participating in any aspect of a particular matter in which you have been personally involved in private practice on behalf of a client, as well as any substantially related matter involving or affecting such clients. You should also disqualify yourself from all particular matters in which, because of the involvement or interests of your prior firm, colleagues or clients, your participation would give rise to an actual or apparent conflict of appearance of impropriety. Examples of such matters include those in which a major prior client has a direct financial interest as well as those in which your prior firm or colleagues could appear to receive preferential treatment.

As of April 1, it appeared that Mr. Malone was still holding open the possibility that he would rule on export licenses and reprocessing requests involving his former clients even though, in the words of the State Department guidelines, these would be matters that were "substantially related" to those in which he formerly gave advice to these clients and in which these clients would most definitely have a "direct financial interest." These uncertainties led the Committee to seek further clarification before voting on Mr. Malone's nomination.

In an April 2 letter to Chairman Percy, Mr. Malone repeated his response to the Committee questionnaire. However, this statement still varied from State Department guidance, particularly with regard to Mr. Malone's disqualification from matters in which the appearance of preferential treatment for his former firm or colleagues might arise. At a Committee meeting that afternoon, State Department attorneys were unable to give a clear answer to the question of whether Mr. Malone would or should disqualify himself from matters involving his prior clients in Taiwan and Japan as well as other clients of his former firm.

On April 3, Mr. Malone wrote Senator Glenn still another letter which finally provided clarification as to his intended actions concerning those clients to whom he had formerly rendered services:

> I will disqualify myself from ruling on export licenses and reprocessing requests for Taiwan Power Company, Tokyo Electric Power Company, and Kansai Electric Power Company and from ruling on all substantially related matters involving such clients (at the very least, such substantially related matters would include the transfer of U.S.-origin spent fuel from Japan to the U.K. and France).

However, as the State Department guidelines make clear, any foreign nuclear client of his former firm could present Malone with a potential appearance of impropriety in his official duties. Nonetheless, Mr. Malone has declined to supply the Committee, or even the Legal Advisor of the State Department, with any listing of those foreign nuclear clients of his former firm known to him. Thus, the State Department's standards on appearance of impropriety will necessarily be self-policing, since without the client listing, the Department cannot ensure that Mr. Malone complies with the terms of this official guidance.

On May 4, Mr. Malone sent a final letter to the Committee restating his pledge to adhere to the State Department guidance and offering specific assurances.

It is instructive to compare Mr. Malone's earlier statements with his final position. In his April 1 letter Mr. Malone stated only that, "I may determine that it is appropriate to disqualify myself from ruling on export licenses and reprocessing requests, as well as requests for permission to transfer U.S.-origin spent fuel from Japan to the U.K. or France, for the above three companies for a period of time. . . ." In his letter of April 2, moreover, he stated, "In summary, I believe that there is no legal bar to my handling almost all matters which will be under my cognizance as a government official. . . ." In contrast, Mr. Malone now recognizes that the guidance requires much more and has agreed expressly to disqualify himself from ruling on:

> Export licenses and reprocessing requests for Japan's two principal nuclear utilities, TEPCO and Kansai;
>
> Export licenses and reprocessing requests for Taiwan's national utility, Taiwan Power Company;
>
> Export licenses and reprocessing requests for General Atomic Company, the principal United States exporter of research reactors and fuel. As of March 31, General Atomic's export licenses were pending for reactor or fuel exports to Mexico, Taiwan, Bangladesh, Malaysia, Morocco, Indonesia and Rumania. (Except in the case of Taiwan and Mexico, General Atomic exports comprise virtually all U.S. nuclear exports to these countries.)
>
> A major policy issue involving Japan, i.e., generic U.S. policy on approving transfer of spent U.S.-origin nuclear fuel from that country to the U.K. or France; and
>
> Any other policy decision whose resolution, in effect, would determine the outcome of a licensing or reprocessing approval decision from which he had disqualified himself.

These clarifications resolve many issues; however, unless the department has the names of the foreign nuclear clients of Mr. Malone's former firm (other than those Mr. Malone personally represented), it would be impossible to verify Mr. Malone's compliance with the Department's stated standards.

Acting Legal Advisor James Michel states in his May 4 letter to Chairman Percy that such information has never been requested of any nominee and that there is "no reason why such a precedent setting condition should be imposed on Mr. Malone." However, State Department requirements for nominees in Mr. Malone's position do necessitate the disclosure of the names of at least some prior clients—certainly those for whom he rendered services personally. Such disclosures are necessary in order to comply with Ethics in Government Act filing requirements. Experts differ—as they did in this case—on the degree to which the lawyers' Code of Professional Responsibility restricts disclosures of client identities. Significantly, Mr. Malone in all his correspondence has never suggested that disclosure of Doub and Muntzing's foreign nuclear clients would be violation of professional ethics and he has never shown any reluctance to divulge the names of his own clients, even though they remain clients with his former firm.

In conclusion, we remain deeply troubled by several aspects of Mr. Malone's nomination:

His having made non-proliferation policy recommendations to an incoming Administration favorable to foreign clients he was representing at the time;

The fact that Mr. Malone's former practice and that of his firm was concentrated so heavily in serving foreign nuclear clients affected by Mr. Malone's prospective decision-making, highlighting the possibility or appearance of preferential treatment;

His inconsistent statements as to the matters from which he would disqualify himself, despite repeated attempts by the Committee to clarify the matter; and

The failure of the State Departrment to obtain the list of clients necessary to help ensure that potential problems do not arise.

Given the record of inconsistencies, remaining doubts, and the prospects for future controversy, we regret that we cannot support the nomination of James Malone for Assistant Secretary of State.

JOHN GLENN.
PAUL S. SARBANES.
EDWARD ZORINSKY.
ALAN CRANSTON.

ADDITIONAL VIEWS OF SENATOR CRANSTON ON MALONE NOMINATION

I concur with the views expressed by Senator Glenn and other members of the minority.

My concern about this particular nomination goes beyond these points, though, I believe that Mr. Malone has already demonstrated his insensitivity to conflict of interest issues by this his performance during the Reagan Administration transition. At this time, he authorized the transition team report calling for the gutting of nonproliferation restriction on exports to foreign countries and foreign utilities on whose payroll he remained.

I believe this was a serious impropriety which, in itself, should disqualify Mr. Malone from consideration for this post.

I am further troubled by the prospect of having an individual who has represented foreign commercial interests professionally placed in the key position for weighing crucial U.S. security interests against these same foreign commercial interests. Inevitably these foreign interests will be viewed with considerable sympathy in Mr. Malone's development and execution of general nonproliferation policy, even if the nominee is barred from participating in specific license applications of former foreign clients. Thus I would conclude that for any genuine assurance that conflicts of interest will not arise, Mr. Malone would have to be barred from participation in any nonproliferation policymaking. The only way to accomplish this end, short of removal of nonproliferation responsibilities from the Oceans, International Environment and Scientific Affairs Bureau, is to oppose Mr. Malone's confirmation.

ALAN CRANSTON.

Ultimately Mr. Malone provided written promises to the committee that convinced a majority of the members to support the nomination. (Malone was reported favorably by a vote of 10–5; Senators Biden, Glenn, Sarbanes, Zorinsky, and Cranston voted in the negative.) In a May 4, 1981 letter to the chairman, Mr. Malone assured the committee that he would:

> accept without qualification the obligation not to participate in any particular matter which might result in, or give the appearance of, a conflict of interest, giving preferential treatment to any person, a loss of independence or impartiality, or which would otherwise adversely affect the confidence of the public in the integrity of the government;

And that he would:

> disqualify myself from all particular matters in which, because of the involvement or interests of my prior firm, colleagues or clients, my participation would give rise to an

> actual or apparent conflict. . . . Examples of such matters include those in which a major prior client has a direct financial interest. . . .

In addition to these general commitments, Mr. Malone made additional specific commitments in this letter concerning the above named utility companies. The full text of that letter follows:

DEPARTMENT OF STATE,
Washington, DC, May 4, 1981.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations,
Washington, DC.

DEAR SENATOR PERCY: I wish to take this occasion to reiterate my intent to comply fully with all applicable laws, regulations and State Department guidelines concerning my disqualification, due to my prior private practice of law, from considering matters as a government official.

Specifically, I accept without qualification the obligation not to participate in any particular matter which might result in, or give the appearance of, a conflict of interest, giving preferential treatment to any person, a loss of independence or impartiality, or which would otherwise adversely affect the confidence of the public in the integrity of the government.

I will disqualify myself, for example, from participating in any aspect of a particular matter in which I have been personally involved in private practice on behalf of a client, as well as any substantially related matter involving or affecting such clients. I will also disqualify myself from all particular matters in which, because of the involvement or interests of my prior firm, colleagues or clients, my participation would give rise to an actual or apparent conflict or appearance of impropriety. Examples of such matters include those in which a major prior client has a direct financial interest, as well as those in which my prior firm or colleagues could appear to receive preferential treatment.

I will also be subject to the ethical standards of the professional Code of Ethics of the bar association or associations of which I am a member, which provide additional guidance for attorneys entering the Government from private practice.

Because of certain questions which have arisen as to the interpretation of the Departmental guidance with respect to avoiding even the appearance of impropriety, I am further prepared to elaborate upon these standards by making the following specific assurances to the Committee:

(1) I will disqualify myself from ruling on export licenses and reprocessing requests for Taiwan Power Company, Tokyo Electric Power Company, Kansai Electric Power Company, and General Atomic Company, and from ruling on all substantially related matters involving any of those firms (including such substantially related matters as the transfer of U.S.-origin spent fuel from Japan to the U.K. and France);

(2) I will disqualify myself from participating in any other specific decisions which would be tantamount to ruling upon the particular matters from which I have agreed to disqualify

myself. This does not necessarily mean that I would not participate in the development of country by country policy.

By disqualification I mean that I will not consider the matter and will instead, in writing, disclose pertinent facts to the appropriate official within the Department and instruct, in writing, my Deputy or other senior subordinate to prepare the necessary materials for decision without advising me anything about the case or seeking my advice or decision. This will be a matter of record in the Department of State.

Sincerely,

JAMES L. MALONE,
Assistant Secretary of State for Oceans, International Environmental and Scientific Affairs-Designate.

Nomination to the Position of Ambassador at Large Withdrawn

In the course of his May 13, 1981 confirmation hearing to the position of Ambassador at Large as the President's Special Representative to the Law of the Sea Conference it was revealed that, despite assurances to recuse himself concerning matters related to his former clients, including Taiwan Power Company, Mr. Malone had actively lobbied the President of the U.S. Export Import Bank to provide more favorable export credit terms to Taiwan Power in connection with its purchase of a nuclear reactor from a U.S. company.

Mr. Malone's veracity was called into question when under questioning he attempted to justify his involvement in the Taiwan issue, stating that he had consulted with his superior, Under Secretary of State Richard Kennedy, who had approved his involvement in this matter despite Mr. Malone's past relationship with the utility and his commitments to the committee. In a May 21, 1982 letter to the chairman, Mr. Malone subsequently admitted that he had never discussed the propriety of his involvement with Under Secretary Kennedy: "I did not discuss the propriety of my involvement in this matter with Under Secretary Kennedy or other senior official." Below are the excerpts from the relevant portion of the May 13th transcript of the hearing, and Mr. Malone's "clarifying" letter.

EXCERPT FROM MAY 13TH HEARING TRANSCRIPT

The CHAIRMAN. Did you consult with anyone at a higher level than yourself at the State Department on it, seek counsel or advice on it?

Mr. MALONE. I certainly discussed it with other people in the State Department who were responsible for nuclear and nonproliferation matters that were senior to me, yes.

The CHAIRMAN. *As to whether or not it was proper for you to make the contacts that you did about Taiwan Power?*

Mr. MALONE. *Yes.* There was no question raised with me that the contacts that I made, as to the propriety.

The CHAIRMAN. Who were the individuals that you consulted with?

Mr. MALONE. *Well, I certainly discussed this with Secretary Kennedy.*

The CHAIRMAN. You did, with the Secretary?

Mr. MALONE. Yes, and he has been involved in this, as I believe you are aware, as well.

The CHAIRMAN. He told you to go right ahead, that it presented no problem? He knew the background, did he? Was he familiar with the background?

Mr. MALONE. Yes.

DEPARTMENT OF STATE,
BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS,
Washington, DC, May 21, 1982.

Hon. CHARLES H. PERCY,
Chairman, Senate Foreign Relations Committee,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciated very much the opportunity to testify before your Committee on May 13. After reviewing the transcript, I would like to offer the following to assure that the record is clear.

First, in an exchange with you regarding my role in the Taiwan Power Co. Ex-Im Bank issue, I answered a question by saying I consulted with other senior officials in the State Department, including Under Secretary Kennedy, on my involvement in the export financing question relating to the possible U.S. reactor sales to the utility. I wish to make clear that these discussions involved the substantive issues concerning non-proliferation policy, the U.S. non-proliferation and trade interests in obtaining the contract, and the relevance of the financing terms to these policy interests. I did not discuss the propriety of my involvement in this matter with Under Secretary Kennedy or other senior officials. I had provided written notice to officials of the Department setting forth my undertakings to the Committee regarding the specifics of my disqualifications. A copy of that memorandum is enclosed. It was also my understanding that a number of officials involved in non-proliferation matters were generally familiar with the scope of my disqualification undertakings that were developed in the confirmation process in 1981.

Second, when I became involved in the inter-agency effort to secure more favorable Ex-Im Bank financing terms to support U.S. non-proliferation policy, the Office of the Legal Adviser indicated to me that I should consider my May 4 letter to the Committee. They indicated that this was a matter for my judgment. Subsequently, the Office of the Legal Adviser advised me that there was a reasonable basis for me to have concluded that my involvement in these efforts to advance U.S. non-proliferation policy did not violate any of the disqualification pledges in my May 4 letter to the Committee.

I would like to add a clarification for the hearing record on the question of my registration under the Foreign Agent Registration Act. I refer to your statement during my confirmation hearing last year when you pointed out for the record that your staff had verified from the Department of Justice that I had actually terminated

my relationship with Taiwan Power Co. on October 1, 1979, although due to an "administrative oversight" the Justice Department did not record this until December 1980.

Also, in connection with my colloquy with Senator Pell near the end of the hearing, I have been authorized by the Department to inform the Committee that in this case no information will be withheld from the Committee because of any attorney-client privilege.

Sincerely,

JAMES L. MALONE.

Enclosure: As stated.

Mr. Malone's flagrant disregard for his commitment to the committee not to involve himself in any matter involving a former client, coupled with his subsequent unsuccessful attempt to "clarify" his testimony concerning that involvement, resulted in the withdrawal of his nomination by the President in the face of certain defeat in the committee.

Poor Management of OES Documented by Inspector General's Report

In addition to the above issues, Mr. Malone's managerial abilities, judgment, and diplomatic skills were called into question by a highly critical report by the Office of the Inspector General (IG) which reviewed Mr. Malone's handling of his responsibilities as head of OES from July 1981 to March 1982. The Inspector General's Office found that, "management has been inadequate", and that Mr. Malone "showed questionable judgment and propriety" in connection with a contract for the personal services of Leigh Ratiner (whom Mr. Malone brought on for less than a year as a personal assistant for LOS matters at a cost of nearly $200,000). The IG's report also called into question Mr. Malone's diplomatic skills noting that "only perfunctory efforts were made" in connection with diplomatic efforts with our allies prior to the last session of the LOS negotiations, which "would be needed if our positions were to prosper at the LOS Conference."

Conclusion

Mr. Malone has been given ample opportunity to allay the concerns we share about his actions, abilities and judgment. He has failed to so. Therefore we believe that the evidence overwhelmingly dictates that James L. Malone should not be given the honor and privilege of being confirmed as Ambassador to Belize by the U.S. Senate. We hope that a majority of the Members of the Senate concur with our conclusions.

APPENDIX

U.S. DEPARTMENT OF STATE,
Washington, DC, February 26, 1986.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: Following the February 19 nomination hearing of James L. Malone to be Ambassador to Belize, additional questions for the record were submitted by Senator Zorinsky.

Please find enclosed the answers to those questions.

Sincerely,

JAMES W. DYER,
Acting Assistant Secretary,
Legislative and Intergovernmental Affairs.

Enclosure: As stated.

Question. In your response to a question from Senator Kerry concerning your contacts with the U.S. Export Import Bank concerning an Exim loan for Taiwan Power Company, you stated that "the Eximbank loan, as I said, did involve the Taiwan Power Company very indirectly."

Question. Who was to be the recipient of this loan? What was the loan to be used for? Didn't Taiwan Power Company stand to benefit directly from the Eximbank loan under discussion?

Question. Why then did you characterize the involvement of Taiwan Power Company in this matter as "very indirect"?

Answer. My answer to Senator Kerry's question should be understood in the context in which the Eximbank issue arose.

Answer. As the Assistant Secretary of State for OES, I was given major responsibility for the implementation of U.S. non-proliferation and nuclear export policies. A critical element of that policy, consistent through several administrations, has been to exert a strong non-proliferation influence on Taiwan by promoting United States, as opposed to foreign suppliers, for nuclear facilities there.

Answer. This consideration was of fundamental importance and, in my view, of direct concern to me as Assistant Secretary. From October 1981 to February 1982, I participated in Administration efforts to convince the Eximbank to offer better financial terms to Taiwan Power Company in a proposed purchase of a nuclear reactor from U.S. vendors. The directly intended effect of this effort was to further critical non-proliferation objectives of the United States and to promote the ability of the U.S. nuclear industry to compete in the international market on a fair basis with heavily subsidized foreign (in this instance, French) firms.

Answer. The benefit to Taiwan Power Co., which in any case would have been negligible given the extremely favorable terms already offered by the Government of France for the sale of a French reactor, was of no relevance to the policy questions involved. This is why I characterized the involvement of Taiwan Power Co. in this matter as "very indirect" when I should prehaps have said that the potential benefits for it were inconsequential.

Question. In response to a question by Senator Kerry concerning whether you had "engaged in lobbying" the president of Eximbank with regard to the terms of a loan under consideration by the bank for Taiwan Power Company, you stated that "I participated . . . as a member of the Administration team that was involved in this."

Question. Did you personally discuss the question of loan terms for Taiwan Power Company with the President of Exim, either in person or by telephone? On how many occasions? Were these contacts made on your own initiative or at the explicit directions of your superior(s)? Please name.

Question. Did you recommend that the terms of the loan be made more favorable than the terms that were then under consideration by Eximbank?

Answer. Again, my response to this question should be understood in the context in which the issue arose.

Answer. From October 1981 through February 1982 I participated with other senior State Department officials, including among others, the then Under Secretary for Management and the Assistant Secretaries for East Asian and Pacific Affairs and Economic and Business Affairs, in an effort to secure favorable Eximbank financing terms for the export of a nuclear reactor to Taiwan. It was clear to us that France had *already* offered very favorable terms for the sale of a French reactor, and that unless more favorable terms were offered by the Eximbank than originally proposed, a U.S. supplier would have no chance to be awarded the contract.

Answer. To the best of my recollection, I personally spoke with Mr. Draper, the President of the Eximbank on two separate occasions on this issue. This was done on the strong recommendation of OES nuclear division senior staff and department officials concerned with non-proliferation policy.

Answer. I did, indeed, together with the Assistant Secretary for Economic and Business Affairs, recommend that the terms of the loan be made more favorable than the terms that were under consideration by the Eximbank—though not, I might add, as favorable as those originally proposed by the Assistant Secretary for East Asian and Pacific Affairs; and not nearly as favorable as the terms already offered by France. I thought it was extremely important to overall U.S. non-proliferation policy to have the reactor purchased from the United States and under U.S. control. Sale of the U.S. reactor would continue the central role of the United States in the Taiwan nuclear program.

Question. You stated that you decided to send the May 21, 1982 letter to Chairman Percy concerning your appearance before the committee on May 13th after reviewing the transcript, in order to ensure that your answer had not been "misinterpreted" with respect to whether or not you had specifically discussed the propriety of

your involvement in the Exim matter with then Under Secretary Kennedy.

Question. Prior to your decision to write this letter did you seek to edit or alter the transcript of the May 13 hearing, whichy was sent to you by the committee, so as to alter the nature of the exchange between Senator Percy and yourself on this subject? Were you then told that this could not be done? By whom? Is this what led you to write the letter of "clarification"?

Answer. During the May 13, 1982 hearing, I did testify in good faith that I had consulted with other senior State Department officials, including Under Secretary Kennedy regarding the Taiwan Power Co. case. That testimony was, indeed, true.

Answer. However, upon reviewing the transcript—which, we were told, was *not* to be printed and was only sent to us by the Committee as a courtesy copy—I became aware of a potential ambiguity. In order to correct any misunderstanding I then wrote to Chairman Percy to make it completely clear that these discussions focused on the substantive issues in the case and not specifically on the question of my recusal.

Answer. To the best of my recollection, a colleague may have suggested that, since the hearing was not to be printed and was only an information copy, it might be appropriate to simply correct the transcript and send it to the committee for its internal use. I decided, however, that it would be more appropriate to write to the chairman directly to be absolutely sure that the committee was not misled. I regret that the chairman misinterpreted this and subsequently suggested after receiving my letter that I had intentionally misled the committee in my testimony. I certainly did not intend to do so and sincerely regret it if I gave that impression to any member of the committee.

Question. Do you believe that it was reasonable to expect members of the committee to assume that you would not involve yourself in any matter having to do with a former client of yours or that of your law firm's as Assistant Secretary of OES, in light of the controverrsy which surrounded the issue of potential conflict of interest during your confirmation.

Question. With whom did you consult before involving yourself in the Taiwan Power Company/U.S. Export-Import Bank matter, concerning the propriety of your involvement, in light of your written commitments to the committee? What did this person or persons advise?

Question. Do you believe you exercised good judgement with respect to your involvement in the Taiwan Power Company/Exim Bank matter? Would you make the same decision again?

Answer. I must respectfully suggest that such a sweeping, general recusal would have rendered me incapable of fulfilling my nonproliferation responsibilities as Assistant Secretary. This is precisely why I insisted on a more appropriate and narrow recusal during my 1981 confirmation which was accepted by the majority of the committee and explained in detail in the committee report (Exec. Rept. 97-9) and Supplemental material (Exec. Rept. 97-11).

Answer. In essence, this included a specific commitment to disqualify myself from export license and reprocessing requests for Taiwan Power Company and from ruling on all substantially relat-

ed matters as well as a general disqualification from "all particular matters in which, because of the involvement or interests of my prior firm, colleagues or clients, my participation would give rise to actual or apparent conflict or appearance of impropriety."

Answer. When I became involved in the inter-agency effort to secure more favorable Eximbank financing terms to support U.S. non-proliferation policy, the Office of the Legal Adviser indicated to me that I should consider my May 4 letter to the committee. They indicated that this was a matter for my judgment.

Answer. I decided that disqualification was neither necessary nor appropriate in these circumstances for the following reasons:

Taiwan Power Company was not a major prior client of my firm and was never a personal client of mine;

The specific commitments I made pertaining to Taiwan Power did not address Exim financing, a subject on which my former firm had never represented Taiwan Power;

The financial interests of Taiwan Power were best served by the French offer. The effort to obtain better terms for a U.S. supplier was not intended to surpass or even to match the French terms. Therefore, it was apparent that the beneficiaries of my efforts were U.S. commercial interests and non-proliferation policy;

I had not originated the preference for U.S. suppliers to Taiwan. This was established as part of U.S. non-proliferation policy long before I took office;

My participation was not as an independent actor, but as part of an Administration team whose members worked in concert in support of established policy objectives; and finally,

As head of the OES bureau, I had an official responsibility to apply my best efforts to further U.S. non-proliferation objectives.

Answer. Subsequently, the Office of the Legal Adviser advised me that there was a reasonable basis for me to have concluded that my involvement in these efforts to advance U.S. non-proliferation policy did not violate any of the disqualification pledges in my May 4 letter to the committee.

Answer. Therefore, I would maintain that my decision in all matters related to my substantive responsibility to promote U.S. non-proliferation policy was appropriate. Again, of course, I sincerely regret any misunderstanding that may have arisen.

Question. You stated, under questioning, that you were an employee of the law firm of Doub and Muntzing, and not a partner. Yet, on several filings by Doub and Muntzing with the Justice Department, in connection with the Foreign Agents Registration Act, you are referred to as a partner. What was your relationship with the firm? How was that relationship different from other individuals employed by the firm? What benefits did you receive as a partner that other employees were not receiving?

Answer. During the period of my employment at the law firm of Doub and Muntzing, I was a salaried employee, not a partner. I had no ownership interest in the firm and did not share in the firm's profits nor were financial statements made available to me. The firm was a professional corporation chartered under the laws

of the District of Columbia with all of the stock owned by William O. Doub and L. Manning Muntzing.

Answer. My relationship to the firm was exactly like all other lawyers in the firm during the period I was there. Other than William O. Doub and L. Manning Muntzing; we were all salaried employees, not partners.

Answer. I received no benefits as a partner. I was not a partner. I received only those benefits made available to the salaried lawyers in the firm. The only members of the firm who received the benefits of partnership were William O. Doub and L. Manning Muntzing, the partners.

Question. You stated that an error was made in the Supplemental statement, pursuant to the Foreign Agents Registration Act, signed and submitted by you to the Department of Justice on April 10, 1979. Specifically, you stated that your response to item 5 (has any person named in item 4 rendered services directly in furtherance of the interests of any foreign principal?) which appeared as follows: "Yes, James L. Malone has rendered services directly in furtherance of the interests of Taiwan Power Co.", was inaccurate. Rather it should have read, "James Malone plans to render service. . . ."

Question. Is this still your explanation?

Question. How do you reconcile your answer to the above with the fact that the April 10, 1979 filing also indicates that you "expended small amounts for taxis" in connection with your activities on behalf of Taiwan Power Company?

Answer. during the course of my employment with Doub and Muntzing, my only duties which related to the Taiwan Power Company involved compiling periodic reports from publicly available data for wide distribution among the firm's clients, including Taiwan Power Company, interested in export license and reprocessing requests. At times it was necessary to go to various government agencies to collect such data, and I may have incurred small expenses for taxis in doing so.

Answer. I do maintain that the explanation I gave with regard to the question of my registration as a foreign agent for Taiwan Power Co. is substantially correct.

Answer. From 1979 to 1980, the law firm of Doub and Muntzing, and several individual firm lawyers including myself, were registered with the Justice Department as "foreign agents" of Taiwan Power Company.

Answer. This registration was done in anticipation of additional work for that utility that was never retained and, thus, was never performed. The language in the registration was erroneously phrased in the past tense when it should correctly have been in the future tense.

Answer. This registration was subsequently terminated retroactive to October 1, 1979, a fact noted by Chairman Percy during my 1981 hearings.

Question. On August 29, 1985 you completed your Financial Disclosure Report, pursuant to the Ethics in Government Act of 1978. On October 8, 1985 you amended that report with the inclusion of a letter from you to Mr. Knute E. Malmborg, Assistant Legal Adviser for Management, stating that you would recuse yourself from par-

ticipation in any matter concerning a company in which you or members of your family have a financial interest.

Question. At whose initiative or suggestion did you write such a letter? Why was it believed that such a letter was necessary or desirable?

Question. Do you or members of your family have a financial interest in any company currently doing business in Belize? Do you or your family have a financial interest in any company which, to the best of your knowledge, may be planning to do business there?

Answer. The letter of recusal was written at the suggestion of Mr. Knute E. Malmborg, Assistant Legal Adviser for Management, Department of State. I was informed that it was standard practice to submit such a letter when a nominee, his spouse or a minor child, has any financial interest in any company which the Legal Adviser's Office has identified as doing business in a country to which he is being sent. I hold approximately 43 shares of Texaco common stock as custodian for my minor son under the Uniform Gifts to Minors Act. Texaco, I am advised, has some petroleum sales in Belize.

Answer. Neither I nor any member of my family have, to the best of my knowledge, any financial interest in any company which is planning to do business in Belize, with the exception of the Texaco common stock just mentioned.

Question. You were asked about the major findings of a report prepared by the Office of the Inspector General (IG) following a review by the Office of the OES Bureau during your stewardship. In addition to your very general response to that question, please answer the following detailed questions:

Question. Did the IG's report find that management of the OES Bureau was "Inadequate"?

Question. Did that report question the judgment and propriety of a contract with the law firm of Dickstein, Shapiro and Morin to retain the services of Leigh Ratiner as your assistant? How much was Mr. Ratiner paid for those services? How long was he employed by you under contract? Did this contract violate State Department rules against personal service contracts?

Question. Did the report express surprise that more energy was not devoted to diplomatic contracts to build support for the U.S. position prior to the last negotiating session of the Law of the Sea Conference? Did it conclude that, "it was clear by early March that there was insufficient preparation to serve our policy interests (with respect to the LOS negotiations"?

Answer. As I explained in great detail during the hearing on February 19, I note with satisfaction, that OES, under my over four year tenure became a very well run and efficient organization. The Action Plan, which I initiated to upgrade and incorporate into U.S. foreign policy the views of those with experience in science and technology matters, was endorsed and supported wholeheartedly by Secretary Shultz and has successfully achieved many of its objectives.

Answer. In the final IG report in 1982, the Inspector General made a number of recommendations. Some of these recommendations were accepted as made and adopted; some were modified in accordance with mutual agreement and adopted; and others were

negotiated and were finally determined not to be appropriate to pursue further. The intent of the Inspector General's report, which is an internal management document, was to imporve the management of the Bureau. This was fully accomplished and both the Bureau and the Inspectors were fully satisfied with the outcome.

Answer. The Department did enter a contract with Dickstein, Shapiro and Morin on July 24, 1981 to provide specified written work products during the Law of the Sea (LOS) negotiations. The specified written work products included advice on background, personalities and history of LOS; commentaries on parts of the proposed treaty; analyses of alternative approaches; assessments of negotiability of parts of the treaty; and provision of information to elicit international reactions to possible U.S. proposals. Mr. Leigh Ratiner was the principal investigator under that contract.

Answer. The Department made payments in October 1981, totalling $80,000 in accordance with an approved contract covering the period of July 24 to September 30, 1981. At my request, the firm continued to provide specified work products after the expiration of the contract period and, in accordance with procurement practice, an equitable adjustment was made and payment of approximately $120,000 for those services was made. The contract was approved by the Department's Contracting Services Division and the Office of the Legal Adviser, which also subsequently confirmed the legality of the contract and the equitable adjustment. The contract was also reviewed by the Department's Inspector General and the Defense Contract Audit Agency.

Answer. Since it was decided that Mr. Leigh Ratiner of the firm of Dickstein, Shapiro and Morin should become directly involved in the LOS negotiations, the Legal Adviser recommended that he be appointed a special government employee. This was done on March 10, 1982 and he was paid for time actually employed at a rate of $221.12 per day, not to exceed $2,211.54 every two weeks (GS 15, step 10). His employment was terminated on April 30, 1982.

Answer. The question of preparation for the March, 1982 Law of the Sea seession was addressed. My responsibilities as the President's Special Representative involved all aspects of our Law of the Sea negotiations and received a major portion of my attention. We spent a great deal of effort on preparation for the March, 1982 session. I believe we were fully prepared when negotiations began.

U.S. DEPARTMENT OF STATE,
Washington, DC, March 12, 1986.

Hon. RICHARD G. LUGAR,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: Following the February 19 nomination hearing of James Malone to be Ambassador to Belize, Senator Zorinsky submitted additional questions to be answered for the record.

Please find enclosed the answers to those questions. A number of questions answered below have been asked in slightly different

form before and responded to. The enclosed responses constitute further expansion on previous answers.

Sincerely,

JAMES W. DYER,
Acting Assistant Secretary,
Legislative and Intergovernmental Affairs.

Enclosure: As stated.

Question. Did you at any time during the course of your review of the transcript of your May 13, 1982 nomination hearing seek to alter your remarks or those of Senator Percy's so as to change the nature of the exchange contained there? Yes or No? How did you change it? Were you told by officials at the State Department that this could be done by you? Yes or No? By Whom?

Answer. No, I did not in any way alter or change the transcript which was provided to me by the Committee for my information only. In order to fully clarify what I believed to be an ambiguity in that transcript, I sent a letter of clarification dated May 21 to the Chairman Percy. Other than the reference by my Deputy referred to in my answer to question two, I do not recall any discussion concerning whether it was permissible to correct such a transcript. To the best of my knowledge the transcript of that hearing was never printed.

Question. You indicated in response to my written question that colleague may have suggested that you amend the transcript to correct the record. Who was that? Did you discuss this suggestion with anyone else? Who?

Answer. My principal Deputy Assistant Secretary, a subordinate of mine suggested as a practical matter we might clarify this ambiguity by correcting the transcript. This was *only* a suggestion. We decided it was *not* the appropriate way in which to clear up the ambiguity and decided instead to send a letter to the Chairman. I do not remember discussing this suggestion with anyone else—whether or not any members of my staff did so, I simply do not know.

Question. Did you at any time following the May 13th hearing speak to Under Secretary Richard Kennedy about your testimony that he had told you that it was proper for you to involve yourself in the Eximbank/Taiwan Power issue despite your written commitment to the Committee? Yes or No? Did you ask him to corroborate that testimony in any way, either in writing or orally to any member of the Committee? Yes or No? What did he say?

Answer. Yes, I did. I do not recall specifically asking the Under Secretary to communicate with the Committee. We did discuss the content of the letter to Chairman Percy in which I sought to clarify the ambiguity in my testimony referred to in questions number one and two above. While I do not recall his exact remarks, the letter to the chairman accurately reflects our discussions.

Question. Were your contacts with the President of Exim on behalf of Taiwan Power at your own initiative or at the explicit direction of your *superior(s)*? Please provide names.

Answer. My contacts with Mr. Draper were, as I recall, urged by my own Nuclear Division staff, and were with the *concurrence*—though *not* at the *direction*—of my senior departmental colleagues.

The Under Secretary for Management, as well as the Assistant Secretary for East Asian and Pacific Affairs and the Assistant Secretary for Economic and Business Affairs, were all in agreement with the policy that some contacts should be made with the Eximbank to achieve a more favorable loan for Taiwan Power.

Question. Your involvement in the Eximbank/Taiwan Power issue has caused you a great many problems. In retrospect, do you believe that you exercised good judgment in involving yourself in this matter in light of written commitments you had made to the Foreign Relations Committee concerning former clients of yours and your firms? Yes or No? Would you make the same decision again to involve yourself in this issue or a similar one where a former client of yours or your firms has any involvement?

Answer. Yes, I believe that my decision in matters related to my substantive responsibility to promote U.S. non-proliferation policy was appropriate. While I also continue to believe that I did not violate any commitments to the committee, in retrospect, I would nevertheless conclude that the potential for misunderstanding or confusion in this instance was such that in a similar situation in the future I would turn the matter over to senior colleagues in the Department.

Question. Do you believe that it is important for a U.S. Ambassador to be an individual of sound judgment, with strong managerial and diplomatic skills?

Answer. Yes, I do.

Question. Did a report by the Office of the Inspector General (IG) on the management and operations of the OES Bureau during a portion of your stewardship find that management was "inadequate"? Yes or No? What explanation did the IG's report cite as evidence to support this conclusion? Please be specific.

Question. Did the IG's report question the judgment and propriety of a contract approved by you for the services of Leigh Ratiner? Yes or No? What justification did it contain for questioning your judgment?

Question. Did the IG's report express surprise that more energy was not devoted to diplomatic contacts to build support for the U.S. position prior to the last negotiating session of the LOS conference? Yes or No? Did it provide any explanation as to why this happened? Yes or No? What was the explanation?

Question. Did the IG's report also conclude that "it was clear by early March that there was insufficient preparation to serve our policy interests (with respect to the LOS negotiations)?" What explanation did the report provide as to why it believed such preparation was insufficient?

Answer. The IG report in 1982 made a large number of comments both positive and negative, and many recommendations. These recommendations have to be considered in the overall context and can not accurately and fairly be responded to in a simple yes or no format. Some of the recommendations made by the IG were adopted; some were modified in accordance with mutual agreement and adopted; and others were negotiated and determined not to be appropriate to pursue further. This entire internal management process was, of course, aimed toward the improve-

ment of the management of the bureau. This I believe it accomplished. The Inspector General and the bureau were fully satisfied with the final outcome.

Answer. The fact that a contract with the firm of Dickstein, Shapiro and Morin was entered into was thoroughly considered in the IG report. Mr. Leigh Ratiner was the principal investigator under that contract as I have noted in my response to a previous question on this point. The original contract covered the period of July 24 through September 30, 1981 and called for specified written work products including advice on background, personalities and histories of LOS; commentaries on parts of the proposed treaty; analyses of alternative approaches; assessments of negotiability of parts of the treaty; and provision of information to elicit international reactions to possible U.S. proposals. At my request, the law firm continued to provide specified work products after the expiration of the initial contract period and in accordance with procurement practice, an equitable adjustment was made and payment made for those services. The entire contract was approved by the Department's Contracting Services Division and the Office of the Legal Adviser, which also confirmed the legality of the contract and the equitable adjustment. The contract was also reviewed by the Department's Inspector General and the Defense Contract Audit Agency. Their conclusions did not suggest impropriety of the contract with Dickstein, Shapiro and Morin, but recommended improved procedures for reviewing work requirements under non-personal service contracts.

Answer. Again as I attempted to make clear in my response to the original written questions the preparation for the March 1982 Law of the Sea session was comprehensively covered. Although, as is virtually always the case, it may have been believed by some that additional efforts could have been made, I believe and the Senior Inter-Agency Group (SIG) responsible with me for these preparations believed that every effort on preparation for the March 1982 session was undertaken. It is our conclusion that we were fully prepared when negotiations began.

Question. Given the conclusions of this report concerning your judgment, management and diplomatic handling of LOS matters do you believe that you possess the qualities that you have indicated are necessary to be considered for a position as a U.S. Ambassador?

Answer. Yes, I do. The President of the United States has expressed his confidence in my ability to represent the United States as the Ambassador to Belize and if confirmed by the Senate, I will serve in that capacity faithfully.

Question. You have testified that despite your April 10, 1979 registration with the Justice Department which stated that "James Malone has rendered services directly in furtherance of the interest of the Taiwan Power Company" and "has had personal contracts with officials of the executive branch and Congress to protect the rights of Taiwan Power Company relating to its generation of nuclear power, particularly in relation to proposed legislation related to Taiwan" no such services were rendered.

Question. This same registration also indicated that you had expensed small amounts of taxi fares in connection with "our activi-

ties on behalf of Taiwan Power Company." Was this also in error in the filing?

Answer. No, it was not an error but was unnecessary under the Act. The activities referred to in which these taxi fares were incurred were connected with the reporting responsibilities I performed while employed by Doub & Muntzing.

Question. This same registration also indicated that Henry D. Kahn had been hired by the firm as a part time law clerk on January 15, 1979, and that he had rendered services to the registrant directly in furtherance of the interests of the foreign principal (Taiwan Power Company). Was Kahn hired as a part time law clerk? What duties did he perform on behalf of Taiwan Power? Is this another error in the filing?

Answer. Henry Kahn was hired by Doub & Muntzing as a part-time law clerk. At the time of the firm's original filing it was anticipated that he would also perform minor responsibilities in connection with work for Taiwan Power Company which would have required registration under the Act but which was never retained, and thus not performed.

Answer. Again, I must emphasize that the firm's entire registration was done in anticipation of requirements which did *not* materialize and thus was premature. The registration itself was then retroactively terminated.

Question. This registration also lists your position in the law firm as "partner." You have indicated that you were not a partner of the law firm. Why did you fill out the form indicating you were? Is this another error in the filing?

Question. On page 9 of this registration form a printed paragraph appears just above your signature. What is the substance of this paragraph? Does it state in part that "(T)he undersigned swears or affirms that he has read the information set forth in this registration statement and . . . that he is familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his knowledge and belief?" Did you sign this registration statement? Did you read this document before signing it? Are you in the habit of signing documents which contain significant errors in them?

Answer. At no time during my association with Doub & Muntzing was I a partner of the firm in a legal or business sense. I was a salaried employee—I had no ownership interest in the firm and did not share in the firm's profits. The financial statements, client lists, and other business records were not available to me.

Answer. At times, however, as a business practice for external purposes, some lawyers employed by the firm, including myself, were referred to in various documents or conversations as "partners." It was not unusual at that firm for senior attorneys in that professional corporation to be referred to as partners, although they were not technically or legally partners.

Answer. I have tried on several occasions to explain the circumstances surrounding this registration carefully and completely. I do agree that the registration document was inadequately drafted, but the intention to comply with the law—even if in advance and, as it turned out, prematurely—was our main concern.

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99TH CONGRESS
2d Session

SENATE

EXEC. REPT.
99-27

TREATY BETWEEN THE UNITED STATES AND ICELAND TO FACILITATE THEIR DEFENSE RELATIONSHIP

OCTOBER 8 (legislative day, OCTOBER 6), 1986.—Ordered to be printed

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Mr. LUGAR, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 99-31]

The Committee on Foreign Relations, to which was referred the treaty between the United States of America and the Republic of Iceland to Facilitate Their Defense Relationship, with related memorandum of understanding, signed at New York on September 24, 1986, having considered the same, reports favorably thereon without amendment and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The treaty would supersede U.S. cargo preference laws for military cargos to Iceland only.

SUMMARY

The treaty would supersede U.S. cargo preference laws, principally the Cargo Preference Act of 1904, for military cargos shipped for purposes of the 1951 United States/Iceland Defense Agreement to and from Iceland only. It provides that such cargos will be open to United States and Icelandic ships on a competitive basis which allows both to maintain a viable presence in the market. An attached memorandum of understanding details how the competitive system would work. Bids would be sought periodically, but the low bidder could not receive more than 65 percent of the cargo to be carried. The remainder would be carried by the lowest bidder from the other country. Consulting procedures are provided in case the next lowest bidder submits a bid which is judged unreasonable.

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ENTRY INTO FORCE AND TERMINATION

The treaty would enter into force upon exchange of instruments of ratification. It would remain in force as long as the United States/Iceland Defense Agreement does. Either side could withdraw upon 12 months notice. The memorandum of understanding would remain in force as long as the treaty does, and would be reviewed annually.

COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing, chaired by Senator Mathias, on the treaty on September 30, 1986. The committee considered the treaty at its business meeting on October 8, 1986, and voted 17 to 0 to order it favorably reported to the Senate for its advice and consent. Voting in favor were Senators Lugar, Helms, Mathias, Kassebaum, Boschwitz, Pressler, Murkowski, Trible, Evans, Pell, Biden, Sarbanes, Zorinsky, Cranston, Dodd, Eagleton, and Kerry.

BACKGROUND AND COMMITTEE COMMENTS

The committee recognizes the importance of the base at Keflavik, and Iceland's continued participation in NATO and the bilateral defense agreement. The treaty is necessary to maintain these and, therefore, the committee enthusiastically recommends that the Senate advise and consent to ratification. At the same time, the committee emphasizes that the treaty is a unique solution to a unique problem.

Iceland is a small island nation with unique strategic significance. It is an integral part of the NATO's northern flank, located close to the Soviet bases on the Kola Peninsula and adjacent to the sealanes of communication between the United States and Europe. Iceland receives no monetary or other compensation for the strategically important base on its territory at Keflavik.

Shipping is vital to the Icelandic economy and is regarded by Iceland as important to its security. Icelandic shipping companies carried all the military cargo between the United States and Iceland from the late 1960's until 1984, when Rainbow Navigation, Inc., was formed. Rainbow Navigation is a small, nonsubsidized U.S. company chartering a ship from the Maritime Administration and employing American Merchant Mariners. Thereafter, Rainbow transported military cargo between the United States and Keflavik under the 1904 Cargo Preference Act. Iceland's reaction was severe. From 1984 to mid-1986, a number of attempts to bypass the requirements of the 1904 act were tried and failed. In July, the Icelandic Government announced that it would enact a provisional law in late September requiring that all military cargo be subject to competitive bidding open to Icelandic ships. In the absence of competition, United States vessels would, under the proposed Icelandic law, be prohibited from delivering military cargo to Iceland.

Iceland has no cargo preference laws, and insists that some Icelandic vessels should, once again, participate in transporting cargo

to Keflavik. The issue has risen to major political proportions in Iceland. Failure to achieve a mutually satisfactory solution could complicate the operation of the vital Keflavik base and lead Iceland to insist on revision or reinterpretation of the 1951 bilateral defense agreement, with inimical consequences for United States and NATO interests.

Consequently, the United States and Iceland have proceeded with the only alternative reasonably available, a treaty to divide the trade. The treaty would supersede U.S. cargo preference laws, principally the 1904 Cargo Preference Act for this unique situation.

While unique circumstances have created a need for the treaty, the need for continued enforcement of the 1904 Cargo Preference Act is as great. Our merchant marine, the Nation's fourth arm of defense, is essential to achieving the seapower capability our Nation must have at its disposal. The 1904 act is critical to the development and maintenance of a strong U.S.-flag merchant marine comprised of American flag ships and crewed by U.S. citizens. This is especially true in view of a recent U.S. Navy study which concluded that the shortage of U.S. citizen merchant mariners is serious today, and worsening every year.

Consequently, the committee recommends that the Senate advise and consent to ratification only with the assurances of the Departments of State and Defense that: (1) the treaty would not be understood as, or appear to be a precedent for, similar weakening of the 1904 Cargo Preference Act in other trades; (2) the administration is committed to the overall integrity and vigorous enforcement of the 1904 act; and (3) the treaty will be implemented in such a way that the existing United States-flag service in the Iceland trade would not be disadvantaged as a result of the treaty. The committee received these assurances at its hearing, and recommends advice and consent on that basis only.

The committee understands and expects that the economic viability of the United States-flag service will be maintained just as if the 1904 act were fully in effect in the Iceland trade. The committee further understands that the Department of Defense will withdraw its rulemaking proposal at 51 Fed. Feg. 27016 (July 28, 1986), a proposal which purported to interpret the "excessive or otherwise unreasonable" provision in the 1904 act, but which would have, in effect, given the Secretary of the Navy the discretion to waive the act at any time.

Finally, the committee is convinced that the precedent, if any, created by the treaty is a positive one for the U.S. merchant marine. First, it reconfirms that the 1904 act can only be revised by congressional action. Second, it confirms that if the act is revised by congressional action to address special circumstances, steps must be taken to assure there is no adverse impact on U.S.-flag service. Third, the circumstances underlying the treaty are so unique that the committee cannot envision them arising in any other trade.

TEXT OF RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the treaty between the United States of America and the Republic of Iceland to Facilitate Their Defense Relationship, with related memorandum of understanding, signed at New York City on September 24, 1986.

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